IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

SOUTHWEST REINSURE, INC.,

Plaintiff,

v. Case No. 11-CV-00689 RHS/ACT

SAFFA REINSURANCE CO., LTD.,
VEHICLE EXTENDED REINSURANCE CO., LTD.,
and BAKERSFIELD GROUP REINSURANCE CO., LTD.,

Defendants.

PLAINTIFF'S OPPOSED MOTION TO SANCTION DEFENDANTS FOR PARTICIPATING IN SETTLEMENT MEDIATION IN BAD FAITH

Plaintiff Southwest Reinsure, Inc. ("Plaintiff"), by counsel, respectfully requests that the Court sanction defendants for participating in the Court-ordered settlement mediation process in bad faith. In support hereof Plaintiff states:

1. On November 11, 2011, the Court entered an Order Setting Rule 16 Settlement Conference, doc. #18 (the "Mediation Order"), setting a settlement mediation for February 22, 2012.

2. On February 9, 2012, the Court entered its Order on Joint Motion to Appoint a Mediator and Vacate Settlement Conference, doc. #27 (the "Supplemental Mediation Order").

3. Pursuant to the Mediation Orders, on April 24, 2012 the parties convened for a settlement mediation in Albuquerque. After half a day, the mediation was continued until May 30, 2012, by agreement of the mediator and the parties, so Plaintiff could provide documentation requested by the defendants verifying the bona fides and amounts of Plaintiff's claims.

4. On April 24, 2012, the mediator sent correspondence to counsel for the parties, setting deadlines and confirming the documents that were to be produced. A copy of the correspondence is attached hereto as Exhibit A.

5. Plaintiff, through substantial effort, assembled the requested documents, made arrangements to provide personnel to make copies for Defense counsel of whatever documents he wished to have, and prepared detailed spreadsheets before the May 8, 2012 deadline.

6. Defendants' counsel reviewed the documents on or about May 12, 2012.

7. Defendants never provided Plaintiff with the required bank account statements.

8. On May 18, 2012, the parties' counsel and the mediator discussed by telephone the status of the mediation, and whether reconvening the mediation on May 30, 2012 would be productive. Defendants' counsel informed the mediator that he thought it made sense to proceed with the continued mediation.

9. The Parties reconvened on May 30, 2012, at the mediator's office. Rather than discussing settlement based on the progress made since the April 24, 2012 session, the defendants began asking for the information that had already been discussed and/or produced. They appeared to be stalling. Finally, shortly before noon, defendants announced that they were not willing to make a settlement offer or engage in settlement discussions. Instead, defendants simply left the mediation.

10. Before leaving, defendants announced that the individuals present at the mediation had no settlement authority.

11. Finally, Defendants stated or implied that they had attended the mediation not for the purpose of trying to settle the dispute, but to obtain additional discovery.

12. Defendants' conduct violated the Court's Mediation Orders. Defendants did not participate in mediation in good faith, refused to negotiate, lacked the required authority, and subverted the process for improper reasons.[1]

13. Plaintiff participated in the mediation process in good faith. Plaintiff was ready, willing, and able to mediate the dispute, sent three representatives to each session, and sent representatives with full authority to settle.

14. Plaintiff spent at least $6,879.97 in the failed mediation process. A breakdown of the expenses is attached hereto as Exhibit B.

15. Defendants should be sanctioned for flouting the Court's orders and abusing the mediation process.

16. Defendants oppose the relief requested in this Motion.

WHEREFORE, Plaintiff requests that the Court sanction Defendants in an amount of at least $6,879.97, plus any other amounts the Court deems necessary to deter such conduct in the future, and for all other just and proper relief.

THUMA & WALKER, P.C.

By: /s/filed electronically
David T. Thuma
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500 Marquette N.W., Suite 650
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Attorneys for Southwest Reinsure, Inc.

[1] The Mediation Orders require the parties to report to the Court on the outcome of the mediation. As set forth above, the mediation failed.

This certifies that on May 31, 2012,
a copy of the foregoing was served
electronically on:

Arlyn Crow

/s/filed electronically
David T. Thuma

David T. Thuma

From: Paul M. Fish [pfish@modrall.com]
Sent: Tuesday, April 24, 2012 1:12 PM
To: David T. Thuma; Arlyn Crow
Subject: Southwest RE v. Saffa Mediation

David and Arlyn,

I think we actually made great progress this morning. Unfortunately, we have a long way to go. I thought it would be useful to formalize time periods for the production of information. This mediation can work if the documents are produced. I guarantee failure if we don't get the information exchanged. We need to gather what there is. To the extent it is insufficient, that is something that will show itself in Court, so we might as well figure it out now. To the extent one side has a prima facie case but the other side doesn't believe it, the other side better realize that simply its believe is insufficient if it can't support its skepticism with evidence. Documents will trump belief and memory.

Most of the discussion today centered around the period (the "disputed period") after the dealerships stopped forwarding the entire premium to Southwest RE. I understand that may be from December of 2005 through 2007, but if you agree to modify that time period and look at a narrower or broader time period, please feel free to do so. I understand that Southwest RE claims an additional amount for prior periods, but I do not know the real basis for the claim or what documents may be available to prove the claim. We suspended the mediation to allow the parties to obtain further information from each other. This is to confirm the following:

1. You will jointly seek leave of Court to extend the mediation until May 30.
2. Within 2 weeks from today, May 8, 2012, Southwest Re will make available to Arlyn and his clients the following:
   a. The claims files for the claims paid during the disputed period.
   b. A statement of the total claims paid for the disputed period.
   c. The trust bank account statements for January 2006 through the end.
   d. The deposit amounts and breakout sheets for the deposits into the trust bank accounts.
   e. Whatever similar information is necessary to support the claim for the earlier periods.
3. Within 2 weeks from today, May 8, 2012, the Defendants will make available to David and his client the bank statements for the disputed period for the discretionary bank accounts into which money was supposed to be sent from the trust accounts. I understand that to be at least an account at Mission Bank. I think Wells Fargo was mentioned, but I am not sure. In any event, whichever those bank accounts are so we can be sure that transfers from the trust accounts actually went into the defendants' accounts.
4. Please exchange any documents that you believe disprove the other side's documents or claims by May 15, 2012.
5. Please make a set of these documents (other than the claims files) for your loyal and hardworking mediator. I would like anything and everything, including any analysis, deposition quotes, legal authority or whatever in my office by May 17. I am going to be out of town the next week and would like to be able to review on the airplane. I am SURE that anything received after that will not be reviewed.
6. We will continue the mediation on May 30, 2012, at 9:30 in our office.

If you have any questions or problems, of course let me know how I can help.

Paul M. Fish
Modrall Sperling Roehl Harris & Sisk, P.A.
500-4th St., NW, Suite 1000
Albuquerque, NM 87102
505-848-1871
505-848-9710 (fax)

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EXHIBIT
A

the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

Modrall, Sperling, Roehl, Harris & Sisk, P.A.

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EXHIBIT B

Mediation fee	$1,750.00	(1/2 of mediation fee)
attorney fees	$1,685.25	(7 hours at $225, plus GRT)
travel expenses	$3,444.72	(see attached chart)
total	$6,879.97	

Air and Hotel Travel Expenses - David May and Kevin Slaton
Haddad Mediation

Date Ticket Purchased	Traveler	Amount	Airline	Description of Travel
3/15/12 & 4/4/12	David May	$ 592.60	American Airlines	Roundtrip from DFW-ABQ on 4/9-11/12 and subsequently modified for 4/10-12/12 for Haddad Mediation
5/18/12	David May	$ 703.60	American Airlines	Roundtrip from DFW-ABQ on 5/29-31/12 for Haddad Mediation
5/29/12	Kevin Slaton	$ 852.60	American Airlines	One way from DAY-ABQ on 5/29/12* - Haddad Mediation
5/31/12	Kevin Slaton	$ 489.10	Delta Airlines	One way from ABQ-DAY on 5/31/12 - Haddad Mediation
		$ 2,637.90		

*Originally purchased ticket on United Airlines for $1343.20; due to weather delay in Chicago, Kevin had to buy a one way ticket on AA from DAY-ABQ

Dates of Stay	Traveler	Amount	Hotel/ Car Rental	Description
4/10-12/12	David May	$ 268.94	Sheraton Uptown, ABQ	Haddad Mediation, two nights at $134.47/night
5/29-31/12	David May	$ 268.94	Sheraton Uptown, ABQ	Haddad Mediation, two nights at $134.47/night
5/29-31/12	Kevin Slaton	$ 268.94	Homewood Suites Uptow	Haddad Mediation, two nights at $134.47/night
		$ 806.82		

GRAND TOTAL: $3,444.72